

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN RIGHTS

Mary Ann Jacobsen,  
Charging Party,

ORDER\_GRANTING  
RESPONDENT'S\_SECOND  
MOTION\_FOR\_DISMISSAL

v.

Circuit Science, Inc.,  
Respondent.

The above-entitled matter is before the Administrative Law Judge on Respondent's June 14, 1991, Motion for Summary Disposition dismissing with prejudice the charge of discrimination. The matter was submitted upon the briefs of the parties supported by affidavits and other documents. The last brief was received June 27, 1991.

Randall J. Fuller of Babcock, Locher, Neilson & Mannella, 118 East Main Street, Anoka, Minnesota 55303, appeared on behalf of Charging Party.  
Michael J. Minenko of Johnson & Madigan, 500 Baker Building, 706 Second Avenue South, Minneapolis, Minnesota 55402, appeared on behalf of Respondent.

Respondent moves for summary disposition on the grounds that a disability claim determination of the Social Security Administration found that as of June 9, 1989, Charging Party was unable to perform her job with Respondent, that Charging Party is bound by that determination and therefore cannot prove that she was qualified for the job as she must in order to prevail in this matter.

ORDER

For the reasons set forth in the following Memorandum, it is hereby ordered that:

1. Respondent's June 14, 1991, Motion for Summary Disposition is GRANTED.
2. Charging Party's Charge of Discrimination is DISMISSED with prejudice.

Dated this \_25th day of July, 1991.

\_\_\_\_\_/s/\_\_\_\_\_

STEVE M. MIHALCHICK  
Administrative Law Judge

MEMORANDUM

Summary disposition under the rules of the Office of Administrative Hearings, Minn. Rule 1400.5500 K., is equivalent to summary judgment under Rule 56 of the Rules of Civil Procedure and is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The non-moving party has the benefit of that view of the evidence which is most favorable and all doubts and inferences must be resolved against the moving party. *Thiele\_v.\_Stich*, 425 N.W.2d 580 (Minn. 1988).

For purposes of this motion, the facts appear as follows. Charging Party suffers from epilepsy. She began working for Respondent in May 1986 at a job entitled "Touch Up." She was a good worker who performed her job well. However, she did have seizures on occasion that rendered her unable to work for some period of time and that usually required that she go home. Within a month or so of her employment, Respondent placed her on part-time work at three days a week and told her that if she didn't feel well in a morning, she shouldn't come into work because a seizure would disrupt the work at the plant. On June 16, 1989, Respondent was informed by her supervisor that she was being put "on call" because she had been missing too much time from work. The Charging Party had last worked on Monday and Tuesday of that week, June 12 and 13, 1989. Respondent was only "called in" to work on two days subsequent to June 16, 1991. That was on August 2 and 9, 1989, and no doctor's release was required for those two days. On April 6, 1990, Charging Party filed a charge of discrimination with the Department of Human Rights alleging that Respondent had discriminated against her in employment on account of a disability in violation of Minn. Stat. § 363.03, subd. 1, in

On February 20, 1990, Charging Party filed a claim for Social Security Disability Benefits alleging that she was disabled since June 9, 1989, due to epilepsy. The application was intended to apply from her last day of regular work, which was actually June 13, 1989, but which was mistakenly submitted as August 9, 1989. The Social Security claim was denied initially and upon

reconsideration. Charging Party then filed a request for hearing before a Social Security Administrative Law Judge. The hearing was held January 7, 1991, at which Charging Party was represented by Mr. Fuller, her attorney in this matter. On May 30, 1991, the Social Security Administrative Law Judge issued a decision finding that Charging Party had been under a "disability" as defined in the Social Security Act since June 9, 1989, and finding, in particular, that she was unable to perform her past work of "touch up" with Respondent and had not engaged in substantial gainful activity since June 9, 1989.

In a disparate treatment claim, the three-step analysis method enunciated by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) must be applied. Danz v. Jones, 263 N.W.2d 395 (Minn. 1978); Sigurdson v. Isanti County, 386 N.W.2d 715 (Minn. 1986). The McDonnell Douglas analysis requires the charging party to establish a prima facie case of discrimination, allows respondent to establish legitimate non-discriminatory reasons for its action and allows a rebuttal by charging party to demonstrate that the offered non-discriminatory reasons are a pretext for discrimination.

Charging Party may establish a prima facie case of discriminatory termination by presenting direct evidence of the employer's discriminatory motive or by establishing the following elements:

1. The employee is a member of a protected class;
2. The employee sought and qualified for the job held;
3. The employee was discharged, despite being qualified;  
and
4. After discharge, the employer assigned a non-member of the protected class to do the same work.

Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983); Sigurdson v. Isanti County, 386 N.W.2d 715 (Minn. 1986); Rutherford v. County of Kandiyohi, 449 N.W.2d 457 (Minn. App. 1989), pet. for rev. denied (Minn. February 28, 1990); Miller v. Centennial State Bank, \_\_\_ N.W.2d \_\_\_ (Minn. App. June 25, 1991). Charging Party has not contended that she has direct evidence of discriminatory motive. Therefore, she must prove the four elements outlined above.

Respondent argues that Charging Party cannot prove that she was qualified for the job and, therefore, cannot establish the second and third elements of a prima facie case because she is bound by the decision in her Social Security disability case under the doctrine of collateral estoppel. Collateral estoppel precludes the relitigation of issues which are both identical to those issues already litigated by the parties in a prior action and necessary and essential

to the resulting judgment. The application of collateral estoppel is appropriate where:

1. The issue was identical to one in a prior adjudication;
2. There was a final judgment on the merits;
3. The estopped party was a party or in privity with a party to the prior adjudication; and
4. The estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Ellis v. Minneapolis Commission on Civil Rights, 319 N.W.2d 702 (Minn. 1982). Where the prior decision was rendered by an administrative agency, the issue must have been necessary to the agency adjudication and properly before the agency and the agency determination must be a final adjudication subject to judicial review. Graham v. Special School District No. 1, \_\_\_N.W.2d\_\_\_ (Minn. July 12, 1991) citing United States v. Utah C

In this case, the issue of disability was necessary to the Social Security adjudication and properly before the agency, the Social Security Administrative Law Judge's decision was the final adjudication (Charging Party has not informed the Administrative Law Judge of any reversal or appeal by the Social Security Administration), Charging Party was a party to the Social Security determination, and Charging Party was given a full and fair opportunity to be heard on the issue. Indeed, Charging Party prevailed on the issue. The question here is whether the issue sought to be precluded from relitigation is identical to that decided in the Social Security decision.

Charging Party argues that the issue decided in the Social Security case was different from the issues to be decided in this case in several respects. First, because Charging Party was only working part-time for Respondent at the time she was put on call, her employment did not constitute "substantial gainful employment" as defined by the Social Security Act and regulations adopted thereunder, and, therefore, a finding that she is not able to engage in substantial gainful employment does not mean that she was unable to perform her job for Respondent in June 1989. Second, Charging Party states that she will be able to demonstrate that she was a good worker, performed her job in a satisfactory manner and was under no doctor's restrictions at the time and thereby prove that she was qualified for the three-day-a-week position that she held. Charging Party also indicates in her affidavit that an additional factor in her decision to apply for Social Security benefits was the depression and stress caused by her layoff by Respondent which worsened in the latter part of 1989.

In summarizing the evidence presented at the Social Security hearing, the Social Security Administrative Law Judge stated:

Claimant asserted that she liked her old job but she would be unable to work whenever her doctor would "up" her medicine because she has side effects and needs more sleep. Her medicine was switched twice since last May. Her side effects include sleepiness, moodiness, blurred vision, stomachaches, diarrhea, poor concentration and headaches. Her past jobs were always part-time. One full-time job was reduced to part-time because of her seizures. She takes two or three naps per day as sleeping helps prevent her seizures. When walking a couple of blocks, her heart hurts and she gets very fatigued. Asked about her returning to her former work, claimant stated that she would have to get up by 4:30 a.m. to get to work by 7:00 a.m. and she experiences seizures if she tries to wake up too fast.

In evaluating the evidence, the Social Security Administrative Law Judge stated that there was no indication in the record that claimant had engaged in substantial gainful activity since June 9, 1989, the alleged onset date of her disability due to epilepsy. He also found that an MRI scan performed in August 1989, revealed a lesion in the medial portion of Charging Party's left occipital lobe. He also found that she was unable to perform her past work of touching up circuit boards. While there may be some indication in the decision of the Social Security Administrative Law Judge that Charging Party's condition has worsened since June 1989, there is no finding that the inability to work arose at a later date. The findings in decision were that Charging Party had a disability since her last date of employment with Respondent (whether that is June 9, 1989, or June 13, 1989 is insignificant) and that she had been unable to perform her past work with Respondent from that date. That issue is identical to the issue of whether she was "qualified" at the time she was laid off. Inability to work means a person is not qualified. In Michel\_v.\_Alan Sturm\_&\_Associates,

SMM